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Attorneys for Plaintiff  
United States of America

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

|                           |   |                                |
|---------------------------|---|--------------------------------|
| UNITED STATES OF AMERICA, | ) | Criminal Case No. 07CR2957-H   |
|                           | ) |                                |
| Plaintiff,                | ) | Date: November 26, 2007        |
|                           | ) | Time: 2:00 p.m.                |
| v.                        | ) |                                |
|                           | ) | GOVERNMENT'S MOTION FOR        |
| ISMAEL RUBIO-OLMEDA,      | ) | FINGERPRINT EXEMPLARS          |
|                           | ) |                                |
| Defendant.                | ) |                                |
|                           | ) |                                |
|                           | ) |                                |
|                           | ) | TOGETHER WITH STATEMENT OF     |
|                           | ) | FACTS AND MEMORANDUM OF POINTS |
|                           | ) | AND AUTHORITIES                |
|                           | ) |                                |
|                           | ) |                                |
|                           | ) |                                |
|                           | ) |                                |
|                           | ) |                                |

COMES NOW, the plaintiff, UNITED STATES OF AMERICA, by and through its counsel  
Karen P. Hewitt, United States Attorney, and Eugene S. Litvinoff, Assistant U.S. Attorney, hereby  
files its motion for fingerprint exemplars.

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**I****INDICTMENT**

On October 30, 2007, a federal grand jury in the Southern District of California returned a one-count Indictment charging Ismael Rubio-Olmeda ("Defendant") with illegal reentry after deportation, in violation of Title 8, United States Code, Section 1326. On that same day, Defendant was arraigned on the Indictment and entered a plea of not guilty.

**II****STATEMENT OF FACTS****A. IMMIGRATION HISTORY**

Defendant is a Mexican citizen who was ordered deported after a hearing before an immigration judge on October 6, 1995. Defendant was physically removed from the United States, by foot, through San Ysidro, California, on July 4, 2007.

**B. RAP SHEET SUMMARY CHART**

| CONVICT DATE | COURT OF CONVICTION                   | CHARGE  | TERM   |
|--------------|---------------------------------------|---|--|
| 8/16/2002    | U.S. District Court - S.D. California | 18 U.S.C. § 1546 - Fraud and Misuse of Visas, Permits, and Other Documents (felony) | 15 months; 3 years supervised release                              |
| 7/8/1995     | U.S. District Court - S.D. California | 8 U.S.C. § 1325 (misd.)   | 180 days   |
| 9/14/1994    | U.S. District Court - S.D. California | 8 U.S.C. § 1325 (misd.)   | 150 days   |
| 1/26/1994    | U.S. District Court - S.D. California | 8 U.S.C. § 1325 (misd.)   | 6 months   |
| 7/26/1993    | CAMC - Manteca                        | VC 10851(a) - Take Vehicle without Consent / Vehicle Theft                          | 120 days jail; 5 years probation                                   |
| 12/16/1992   | CASC - Imperial County                | PC 496.1 - Receive Known Stolen Property  | 2 years prison (suspended); 180 days jail; 3 years probation, fine |
| 7/10/1989    | U.S. District Court - S.D. California | 8 U.S.C. § 1325 (misd.)   | 40 days  |
| 4/15/1989    | U.S. District Court - S.D. California | 8 U.S.C. § 1325 (misd.)   | 120 days   |



1 fingerprint examiner to testify that Defendant is the individual whose fingerprint appears on the  
 2 warrants of deportation and other deportation documents. A number of chain of custody witnesses  
 3 could be eliminated, and judicial resources conserved, by permitting the Government's expert to  
 4 take Defendant's fingerprints himself. The Defendant's fingerprints are not testimonial evidence.  
 5 See Schmerber v. California, 384 U.S. 757 (1966). Further, using identifying physical  
 6 characteristics, such as fingerprints, does not violate Defendant's Fifth Amendment rights against  
 7 self-incrimination. United States v. DePalma, 414 F.2d 394, 397 (9th Cir. 1969); Woods v. United  
 8 States, 397 F.2d 156 (9th Cir. 1968); see also, United States v. St. Onge, 676 F. Supp. 1041, 1043  
 9 (D. Mont. 1987). Accordingly, the Government requests that the Court order that Defendant make  
 10 himself available for fingerprinting by the Government's fingerprint expert.

## 11 VI

### 12 CONCLUSION

13 For the foregoing reasons, the United States requests that the Court deny Defendant's  
 14 motions, except where unopposed, and grant the United States' motions for reciprocal discovery  
 15 and fingerprint exemplars.

16 DATED: November 19, 2007

17 Respectfully submitted,  
 18 KAREN P. HEWITT  
 19 United States Attorney

20 /s/ *Eugene S. Litvinoff*

21 EUGENE S. LITVINOFF  
 22 Assistant United States Attorney  
 23 Attorneys for Plaintiff  
 24 United States of America  
 25 Email: [Eugene.Litvinoff2@usdoj.gov](mailto:Eugene.Litvinoff2@usdoj.gov)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

ISMAEL RUBIO-OLMEDA,

Defendant.

Case No. 07CR2957-H

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED THAT:

I, EUGENE S. LITVINOFF, am a citizen of the United States and am at least eighteen years of age. My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I have caused service of the **GOVERNMENT'S MOTION FOR FINGERPRINT EXEMPLARS** on the following parties by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

**1. Erick L. Guzman, Esq.**

I hereby certify that I have caused to be mailed the foregoing, by the United States Postal Service, to the following non-ECF participants on this case:

N/A

the last known address, at which place there is delivery service of mail from the United States Postal Service.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 19, 2007.

/s/ Eugene S. Litvinoff  
EUGENE S. LITVINOFF  
Assistant U.S. Attorney